

WATER RIGHT AND GROUND WATER MANAGEMENT BASICS

**MOSCOW PUBLIC
INFORMATION MEETING
FEBRUARY 2, 2004**

HOW WE GOT HERE

- THE PALOUSE BASIN AQUIFER COMMITTEE
IDWR INVOLVEMENT
THE INTER-AGENCY AGREEMENT
- THE RALPH NAYLOR FARMS APPLICATION
- THE PETITION FROM THE COALITION
IDWR WEBSITE

WATER RIGHT BASICS

Appropriation Doctrine

Waters of the State Are Public

Kind and Nature of Rights

Changing Water Rights

Managing Water Rights

APPROPRIATION DOCTRINE

- Idaho is a *prior appropriation* state.
- An *appropriation* is made by *diverting water* from where it naturally occurs and placing that water to a *beneficial use*.
- Water may be appropriated *only* for beneficial uses.
- In times of water shortage, the earlier (*prior*) use receives water first.
- Idaho does not recognize *riparian* water uses.

PUBLIC WATERS

- Idaho law declares all waters of the state, when flowing in their natural channels, including natural springs, lakes, and ground waters of the state to be *public waters*.
- A *water right* is the right to divert the *public waters* of the State of Idaho and place them to a *beneficial use*.

- Idaho law guarantees the right to *appropriate* the *unappropriated public waters* of the state for beneficial purposes.
- When a right to the use of the *public water* is established by *appropriation*, the resulting *water right* is a real property right.
- The laws of the State of Idaho protect real property rights, including *water rights*.
- The real property right in water is secure so long as at it is *beneficially* used.

WHAT ARE WATER RIGHTS?

- A *real property right* based upon the *appropriation* of the *public waters* of the state and *application* of those waters to *beneficial use*.
- Exceptions to the diversion requirement.
 - In stream water for livestock.
 - Protection of water for public use, i.e. minimum in stream flows or lake levels.

KIND AND NATURE OF RIGHTS

- Rights established by individuals or organizations.
- Rights resulting from being within the service area of a city, utility, home owners association or other organization.
- Rights held in trust by an irrigation district.
- Rights represented by shares in a ditch company or other organization.
- Federal reserved water rights.

SERVICE AREA WATER RIGHTS

- Usually associated with household water supply in a city or subdivision, for example.
- The *right* to use water results from location within a service area and usually the payment of a fee.
- The *appropriative water right* is held by the city, utility, association, etc.

IRRIGATION DISTRICTS

- Irrigation districts have established boundaries within which they provide water.
- Water users receive water from the irrigation district for their acreage entitlement.
- Water users usually pay an assessment to the irrigation district to receive water.

- Irrigation districts may move water within the district boundaries under their own authority.
- The *appropriative water right* is held in trust by the irrigation district for the water users within the district.
- An entire title of the Idaho code is devoted to irrigation district law.

DITCH ORGANIZATIONS

- A water user may receive water from a ditch company, canal company, Carey Act Company, lateral users association, etc.
- The organization is the owner of the *water right*.
- The water user's entitlement to receive water is represented by shares or other evidence of ownership in the organization.

- The water users usually pays a fee or assessment to the organization.
- Some organizations exist that are carrying companies, i.e., they transport water for water users, but the water users must have their own *appropriation*.

FEDERAL RESERVED WATER RIGHTS

- Based upon federal law, not state law.
- Rights are associated with a reservation of land.
- Rights may be implicit or explicit.
- Right is for the minimum amount of water necessary to not entirely defeat the purpose of the reservation.

- A federal reserved water right may be held by an individual as a successor in interest.
- Federal reserved water rights were first recognized in the 1908 Winters case.
- Federal reserved water rights cannot be forfeited through non-use.
- The priority of a federal reserved water right dates from the creation of the reservation.

WATER RIGHT ELEMENTS

- Priority date.
- Water source.
- Purpose(s) of use.
- Period of the year when water can be used.
- Location of the point(s) of diversion.
- Location of the place(s) of use.
- Quantity of water.
- Owner and owner's address.

CONVERSION FACTORS

- 1 Cubic Foot = 7.48 Gallons
- 1 Cubic Foot Per Second (cfs) =
448.8 Gallon Per Minute (gpm)
- 1 Acre Feet (AF) Per Day
43,560 Cubic Feet
325,560 Gallons

CREATING A WATER RIGHT

Mandatory Permit Requirement

Ground Water - 1963

Surface Water - 1971

Exceptions:

Domestic Uses – Ground Water

In stream Stockwatering

GROUND WATER PERMIT EXEMPTIONS

- Homes, Livestock, Camps
13,000 Gallons per Day
Max. of 1/2 Acre of Irrigation
- Any Other Small Use
0.04 Cubic Feet per Second (18 GPM)
2500 Gallons per Day

STEPS TO A WATER RIGHT

- Application
- Permit
- License
- Decree (Eventually!)

APPLICATION

- File With IDWR.
- Form from IDWR Or Internet Download.
- Fee.
- Establishes Priority Date.
- IDWR Publishes Notice.
- Hearing If Protested.

APPROVAL CRITERIA

1. Is Water Supply Sufficient?
2. Will Other Rights Be Injured?
3. Adequate Finances?
4. Speculative?
5. In Local Public Interest?
6. Conserve Water In Idaho?

PERMIT

- Up To 5 Years To Develop.
- Extension Of Time - 5 Yrs.
- Must File “Proof Of Beneficial Use” Within The Permit Period.
- Permit Will Lapse If Proof Is Not Timely Filed.

LICENSE

- Issued For Development Within Scope Of Permit Found By Field Examination.
- Valid In Perpetuity.
- May Be Cancelled If License Conditions Are Not Followed Or If Not Used For 5 Years.

CHANGING RIGHTS

- Amendments
- Transfers
- Exchanges
- Ownership Changes and Splits
- Temporary Changes
- Forfeiture and Abandonment

AMENDMENT

- To change the point of diversion, the place of use, period, nature or other substantial change to a *water right permit*.
- File application with IDWWR.
- Filing fee.
- Director of IDWWR gives notice as *he sees fit*.
- IDWWR will hold hearing if protested.

APPROVAL CRITERIA

- No enlargement of water use.
- No injury to other water users.

TRANSFER

- To change the point of diversion, place of use, period of use, or nature of use of an *established water right*.
- Application is made to IDWR.
- Filing fee is required.
- Notice of transfer is published.
- Hearing if transfer is protested.

APPROVAL CRITERIA

- No other water rights may be injured.
- No enlargement of the original right.
- Conserves water in Idaho.
- In the local public interest.
- The new use is a beneficial use.
- Does not adversely affect the agricultural base.

EXCHANGE

- The holder of a surface water right may seek to exchange the use of water.
 - With water from the same or different surface water source.
 - With water from one or more water rights from the same or different surface water sources.

- Application is made to IDWR.
- Filing fee is required.
- Notice is published.
- A hearing will be held if protested.

APPROVAL CRITERIA

- No injury to other water rights.
- No enlargement of any water right.
- Conservation of water in Idaho.
- In the local public interest.

OWNERSHIP CHANGES WATER RIGHT SPLITS

- Notice is submitted to IDWR.
- No fee is water right is pending in an ongoing adjudication.
 - Fee is \$25 for change of ownership.
 - Fee is \$100 for split of a water right.

- ***NOTICE IS APPLICABLE TO ALL
RECORDED WATER RIGHTS!***

ABANDONMENT/FORFEITURE

- *Abandonment* is rooted in common law and consists of the intentional act of abandoning a water right.
- *Forfeiture* is a statutory provision providing a water right is lost if not used for 5 consecutive years.
 - Water right owner can apply to IDWR for one 5 year extension to avoid forfeiture.

DEFENSES TO FORFEITURE

- Set aside programs.
- Certain rights of municipal providers.
- If right is not needed but full beneficial use is maintained through land application of waste.
- If right is not diverted in compliance with an approved ground water management plan.

MANAGEMENT LEVELS DURING WATER SHORTAGES

- Level 1- Status Quo
- Level 2 - Limit uses to that which is authorized by existing rights
- Level 3 – Regulate to protect prior rights

KEEP STATUS QUO

1. Designate GWMA, CGWA Or Moratorium Area.
2. Monitor Uses - Aerial Photos, Landsat, Field Observation, Citizen Complaints, Etc.
3. Manage By N.O.V. Or Injunction.

LIMIT TO EXISTING RIGHTS

1. Knowledge Of Rights Needed
Best If Adjudication Completed
2. Create Measurement Districts Or Water Districts

REGULATE BY PRIORITY

1. Rights Must Be Adjudicated.
2. Create Water District - Manage through a Watermaster.
3. Know the Hydrology of the System.
Water Supply Available.
Interrelationships Among Rights.
Conjunctive Management, if Applicable.

GROUND WATER MANAGEMENT BASICS

1. Any Use Requires a Recorded Right
(Domestic Exemption from Permitting)
2. First In Time - First in Right
3. Reasonable Pumping Level
4. Mining Not Permitted

SEC. 42-237a.g., IDAHO CODE

- “ ... the director may allow withdrawal at a rate exceeding the reasonably anticipated rate of future natural recharge if the director finds it is in the public interest and if it satisfies the following criteria:
1. A program exists or likely will exist which will increase recharge or decrease withdrawals within a time period acceptable to the director to bring withdrawals into balance with recharge.
 2. Holders of senior rights to use ground water will not be caused thereby to pump water from below the established reasonable pumping level.”

GROUND WATER MANAGEMENT TOOLS

Moratorium Area

Ground Water Management Area

Critical Ground Water Area

Water Measurement District

Water District

GROUND WATER MANAGEMENT AREAS

Ground Water Management Area

“ . . . any ground water basin or designated part thereof which the director of the department of water resources has determined may be approaching the conditions of a critical ground water area.”

Idaho Code § 42-233b

CRITICAL GROUND WATER AREAS

“... any ground water basin, or designated part thereof, not having sufficient ground water to provide a reasonably safe supply for irrigation of cultivated lands, or other uses in the basin at the then current rates of withdrawal, or rates of withdrawal projected by consideration of valid and outstanding applications and permits, as may be determined and designated, from time to time, by the director of the department of water resources.”

Idaho Code § 42-233a

IDWR AUTHORITIES IN A GWMA OR CGWA

- Deny Applications/Restrict Permits.
- Require Reporting of Withdrawals & Other Necessary Information.
- Order Curtailment On A Time Priority Basis.
- This Order Must Be Issued before Sept 1 To Be Effective for the Next Season.